

# INSPECTIONS AND APPEALS DEPARTMENT[481]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 135C.2, 135C.26 and 135C.36, the Department of Inspections and Appeals hereby amends Chapter 50, "Health Care Facilities Administration," and Chapter 56, "Fining and Citations," Iowa Administrative Code.

Item 1 rescinds rule 481—50.7(10A,135C) and adopts a new rule in lieu thereof to clarify when health care facilities must notify the Department of an occurrence. The rule clearly defines "major injury" and provides clarification on other occurrences that require notification. Item 3 amends rule 481—56.9(135C) to clarify the factors considered in determining the class of violation.

The comments received from the public were generally favorable, but some commenters requested further clarification in certain areas. Changes were made to the rules to reflect those comments.

Notice of Intended Action was published in the April 9, 2008, Iowa Administrative Bulletin as **ARC 6710B**. In response to comments, the following changes were made since publication of the Notice.

- Subrule 50.7(1) was changed to add references to the definition of ambulatory.
- Subrule 50.7(3) was changed to provide further clarity on the situations intended to be covered by this subrule.
- Subrule 50.7(4) was changed so that the industry term "elopes" replaces the term "wanders away." Additionally, a clear definition of "elopes" was provided.
- Subrule 50.7(6) was changed to limit the need to report fires in facilities to those that cause injury, that require the notification of emergency services, or that call for full or partial evacuation.
- Subrule 50.7(7) was changed to limit the need to report problems with sprinkler or alarm systems to those instances in which the system is down more than 4 hours in a 24-hour period and clarifies that notification to the Department and the State Fire Marshal is required.
- Subrule 56.9(2) was changed to limit the past history of a facility as it relates to a violation that has occurred to the 24 months preceding the violation.

These amendments were presented to the Board of Health for its initial review on March 12, 2008. The amendments were approved by the Board of Health on July 24, 2008.

These amendments are intended to implement Iowa Code sections 135C.2, 135C.26, and 135C.35.

These amendments will become effective on September 17, 2008.

The following amendments are adopted.

ITEM 1. Rescind rule 481—50.7(10A,135C) and adopt the following **new** rule in lieu thereof:

**481—50.7(10A,135C) Additional notification.** The director or the director's designee shall be notified within 24 hours, or the next business day, by the most expeditious means available (I,II,III):

**50.7(1)** Of any accident causing major injury.

*a.* "Major injury" shall be defined as any injury which:

- (1) Results in death; or
- (2) Requires admission to a higher level of care for treatment, other than for observation; or
- (3) Requires consultation with the attending physician, designee of the physician, or physician extender who determines, in writing on a form designated by the department, that an injury is a "major injury" based upon the circumstances of the accident, the previous functional ability of the resident, and the resident's prognosis.

*b.* The following are not reportable accidents:

- (1) An ambulatory resident, as defined in rules 481—57.1(135C), 58.1(135C), and 63.1(135C), who falls when neither the facility nor its employees have culpability related to the fall, even if the resident sustains a major injury; or
- (2) Spontaneous fractures; or
- (3) Hairline fractures.

**50.7(2)** When damage to the facility is caused by a natural or other disaster.

**50.7(3)** When there is an act that causes major injury to a resident or when a facility has knowledge of a pattern of acts committed by the same resident on another resident that results in any physical injury. For the purposes of this subrule, “pattern” means two or more times within a 30-day period.

**50.7(4)** When a resident elopes from a facility. For the purposes of this subrule, “elopes” means when a resident who has impaired decision-making ability leaves the facility without the knowledge or authorization of staff.

**50.7(5)** When a resident attempts suicide, regardless of injury.

**50.7(6)** When a fire occurs in a facility and the fire requires the notification of emergency services, requires full or partial evacuation of the facility, or causes physical injury to a resident.

**50.7(7)** When a defect or failure occurs in the fire sprinkler or fire alarm system for more than 4 hours in a 24-hour period. (This reporting requirement is in addition to the requirement to notify the state fire marshal.)

NOTE: Additional reporting requirements are created by other rules and statutes, including but not limited to Iowa Code chapter 235B and 2008 Iowa Acts, House File 2591, which require reporting of dependent adult abuse.

ITEM 2. Amend **481—Chapter 50**, as follows:

These rules are intended to implement Iowa Code sections 22.11, and 135B.3 to 135B.7, 135C.6, 135C.7, 135C.10, 135C.11, 135C.14, 135C.16, 135C.19, and 135C.26 and Iowa Code chapters 10A and 135C.

ITEM 3. Amend rule 481—56.9(135C) as follows:

**481—56.9(135C) Factors determining selection of class of violation.** In determining which class of violation will be designated in the citation, where more than one class is specified in the notation following the rule, the director of the department of inspections and appeals ~~may~~ shall consider evidence of the circumstances surrounding the violation, including, but not limited to, the following factors:

**56.9(1)** ~~The frequency and length of time during which the violation occurred, i.e., whether the violation was an isolated or a widespread occurrence, practice, or condition;~~

**56.9(2)** ~~The frequency of the violation, i.e., whether the violation was an isolated or a widespread occurrence, practice, or condition;~~

**56.9(3)** ~~56.9(2)~~ The past history of the facility; within 24 months of the violation as it relates to the nature of the violation, i.e., ~~whether the violation was a first time occurrence or one which has occurred in the past at that facility;~~

**56.9(4)** ~~56.9(3)~~ The ~~intent~~ culpability of the facility; as it relates to the reasons the violation occurred;

**56.9(5)** ~~56.9(4)~~ The extent of any harm to the residents or the effect on the health, safety, or security of the residents which resulted from the violation;

**56.9(6)** ~~56.9(5)~~ The relationship of the violation to any other types of violations which have occurred in the facility, i.e., ~~whether other violations in combination with the violation in question, caused increased harm or adverse effects to the residents of the facility;~~

**56.9(7)** ~~56.9(6)~~ The actions of the facility after the occurrence of the violation, including when corrective measures, if any, were implemented and whether the facility notified the director as required;

**56.9(8)** ~~56.9(7)~~ The accuracy and extent of records kept by the facility which relate to the violation, and the availability of such records to the department;

**56.9(9)** ~~The number of other types of related violations occurring simultaneously or within a short period of time of the violation in question.~~

**56.9(8)** The rights of residents to make informed decisions with their doctor(s) and family/legal representative(s); and

**56.9(9)** Whether the facility made a good-faith effort to address a high-risk resident’s specific needs, and whether the evidence substantiates this effort.

ITEM 4. Amend **481—Chapter 56**, as follows:

These rules are intended to implement Iowa Code ~~sections 10A.202, 10A.402, 135C.14(8), 135C.25 and 135C.36~~ chapters 10A and 135C.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/08.